

AMENDED IN SENATE JUNE 17, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY APRIL 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1816

Introduced by Assembly Member Yamada

February 18, 2014

An act to amend Section 1420 of the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1816, as amended, Yamada. Long-term health care facilities.

(1) Existing law provides for the licensure and regulation by the State Department of Public Health of health care facilities, including long-term health care facilities, as defined. Existing law establishes procedures to be followed when the department receives a written or oral complaint about a long-term health care facility. A complaint is defined to mean any notice to the department, other than a report from the facility, of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute a violation.

This bill, on or before July 1, 2015, would require the department to set a performance benchmark for completing its investigations within a defined number of days after receiving the complaint, not to exceed 60 working days. The bill would require the department, if it extends an investigation beyond the number of days specified in the benchmark, to notify the complainant, in writing, of the basis for the extension. The bill would require, effective July 1, 2015, and upon request of the complainant, that the department provide specific findings concerning

an alleged violation, and include a summary of the evidence upon which the determination is based. The bill would require the department to comply with those specified time periods established for investigations and inspections of complaints from a facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that may constitute an alleged violation of these requirements. The bill would require the department to analyze its compliance with the benchmark in its annual system and staffing analysis, to make that analysis available to the relevant fiscal and policy committees of the Legislature, and to post it on the department's Internet Web site.

(2) Existing law provides the complainant with 5 business days after receipt of the notice of the department's determination in which to request an informal conference.

This bill would, instead, provide the complainant with 15 days after receipt of the notice in which to request an informal conference.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1420 of the Health and Safety Code is
2 amended to read:
3 1420. (a) (1) Upon receipt of a written or oral complaint, the
4 department shall assign an inspector to make a preliminary review
5 of the complaint and shall notify the complainant within two
6 working days of the receipt of the complaint of the name of the
7 inspector. Unless the department determines that the complaint is
8 willfully intended to harass a licensee or is without any reasonable
9 basis, it shall make an onsite inspection or investigation within 10
10 working days of the receipt of the complaint. In any case in which
11 the complaint involves a threat of imminent danger of death or
12 serious bodily harm, the department shall make an onsite inspection
13 or investigation as soon as practicable, and in no case more than
14 24 hours of the receipt of the complaint. In any event, the
15 complainant shall be promptly informed of the department's
16 proposed course of action and of the opportunity to accompany
17 the inspector on the inspection or investigation of the facility. Upon
18 the request of either the complainant or the department, the
19 complainant or his or her representative, or both, may be allowed
20 to accompany the inspector to the site of the alleged violations

1 during his or her tour of the facility, unless the inspector determines
2 that the privacy of any patient would be violated thereby.

3 (2) When conducting an onsite inspection or investigation
4 pursuant to this section, the department shall collect and evaluate
5 all available evidence and may issue a citation based upon, but not
6 limited to, all of the following:

7 (A) Observed conditions.

8 (B) Statements of witnesses.

9 (C) Facility records.

10 (3) On or before July 1, 2015, the department shall set a
11 performance benchmark for completing its investigation within a
12 defined number of days after receiving the complaint. The
13 performance benchmark may be less than, but shall not exceed,
14 60 working days.

15 (4) If the department extends an investigation beyond the
16 number of days specified in the performance benchmark, it shall
17 notify the complainant, in writing, of the basis for the extension,
18 and shall include in the notice the status of the investigation and
19 the anticipated completion date. The department shall, thereafter,
20 complete the investigation as expeditiously as possible.

21 (5) Within 10 working days of the completion of the complaint
22 investigation, the department shall notify the complainant and
23 licensee, in writing, of the department's determination as a result
24 of the inspection or investigation.

25 (6) Effective July 1, 2015, upon request of the complainant, the
26 department shall provide specific findings concerning an alleged
27 violation, and shall include a summary of the evidence upon which
28 the determination is made. The written determination shall not
29 disclose the names of individual residents.

30 (b) Upon being notified of the department's determination as a
31 result of the inspection or investigation, a complainant who is
32 dissatisfied with the department's determination, regarding a matter
33 which would pose a threat to the health, safety, security, welfare,
34 or rights of a resident, shall be notified by the department of the
35 right to an informal conference, as set forth in this section. The
36 complainant may, within 15 days after receipt of the notice, notify
37 the director in writing of his or her request for an informal
38 conference. The informal conference shall be held with the
39 designee of the director for the county in which the long-term
40 health care facility that is the subject of the complaint is located.

1 The long-term health care facility may participate as a party in this
2 informal conference. The director's designee shall notify the
3 complainant and licensee of his or her determination within 10
4 working days after the informal conference and shall apprise the
5 complainant and licensee in writing of the appeal rights provided
6 in subdivision (c).

7 (c) If the complainant is dissatisfied with the determination of
8 the director's designee in the county in which the facility is located,
9 the complainant may, within 15 days after receipt of this
10 determination, notify in writing the Deputy Director of the
11 Licensing and Certification Division of the department, who shall
12 assign the request to a representative of the Complainant Appeals
13 Unit for review of the facts that led to both determinations. As a
14 part of the Complainant Appeals Unit's independent investigation,
15 and at the request of the complainant, the representative shall
16 interview the complainant in the district office where the complaint
17 was initially referred. Based upon this review, the Deputy Director
18 of the Licensing and Certification Division of the department shall
19 make his or her own determination and notify the complainant and
20 the facility within 30 days.

21 (d) Any citation issued as a result of a conference or review
22 provided for in subdivision (b) or (c) shall be issued and served
23 upon the facility within three working days of the final
24 determination, unless the licensee agrees in writing to an extension
25 of this time. Service shall be effected either personally or by
26 registered or certified mail. A copy of the citation shall also be
27 sent to each complainant by registered or certified mail.

28 (e) A miniexit conference shall be held with the administrator
29 or his or her representative upon leaving the facility at the
30 completion of the investigation to inform him or her of the status
31 of the investigation. The department shall also state the items of
32 noncompliance and compliance found as a result of a complaint
33 and those items found to be in compliance, provided the disclosure
34 maintains the anonymity of the complainant. In any matter in which
35 there is a reasonable probability that the identity of the complainant
36 will not remain anonymous, the department shall also notify the
37 facility that it is unlawful to discriminate or seek retaliation against
38 a resident, employee, or complainant.

39 (f) For purposes of this section, "complaint" means any oral or
40 written notice to the department, other than a report from the

1 facility, of an alleged violation of applicable requirements of state
2 or federal law or any alleged facts that might constitute a violation
3 of these requirements.

4 (g) The department shall apply the timeframes for investigation
5 or inspection established in this section to a report from the facility
6 of an alleged violation of applicable requirements of state or federal
7 law or any alleged facts that might constitute a violation of those
8 requirements.

9 (h) It is the intent of the Legislature in enacting the amendments
10 that added this subdivision that the department endeavor to
11 complete investigations of complaints within the benchmark
12 established pursuant to this section.

13 (i) The department shall analyze its compliance with the
14 benchmark developed pursuant to paragraph (3) of subdivision (a)
15 in its annual system and staffing analysis prepared pursuant to
16 paragraph (2) of subdivision (d) of Section 1266. The analysis
17 required pursuant to this subdivision shall be made available to
18 the relevant fiscal and policy committees of the Legislature and
19 shall be posted on the department's Internet Web site. The analysis
20 shall provide data on the department's performance and shall
21 include, at a minimum, a tabulation of all of the following:

22 (1) Open investigations.

23 (2) Completed investigations.

24 (3) Number and percentage of investigations that meet the
25 benchmark.

26 (4) Average length of time to complete an investigation.

27 (j) *Nothing in this section shall be interpreted to diminish the*
28 *department's authority and obligation to investigate and enforce*
29 *any alleged violation of applicable requirements of state or federal*
30 *law, or any alleged facts that might constitute a violation of*
31 *applicable requirements of state or federal law.*